

# LIABILITIES AND INSURANCE

**Before starting your business, you should be aware of the potential liabilities which may be incurred when operating a business. You should look into what types of insurance may be required or may be in your best interest to protect your investment, business property and business income. Insurance companies can put together a specialized insurance package to meet the exact needs of your business. While it often makes good business sense to purchase various forms of insurance coverage, don't buy what you don't need! Here are some general types of insurance that you may want to consider.**

## BASIC BUSINESS LIABILITIES

When you operate your own business there are a number of different liabilities that may be incurred as part of your business operations. If your business has employees, the business is liable for the timely payment of all payroll taxes. If you collect sales taxes, they must be remitted properly. If either payroll or sales taxes are not paid, the government may seize the business and sell assets to collect the taxes due. Your business may also be held liable for injuries to your employees and your customers that occur at your work place or due to products you manufacture. The business may incur liabilities whenever there is a contract for the performance of services or for the purchase or sale of products. Your personal liability will be determined by the legal structure of your business and/or personal guarantees you make on behalf of the business.

## ENVIRONMENTAL LIABILITIES

Small businesses that produce hazardous waste are required to obtain proper permitting, registration and disposal under federal and state guidelines. As a business owner, you should be knowledgeable regarding the materials you use and produce as part of your business operations. If you are purchasing an existing business, the liabilities for the previous owners' operations may be transferred to you. If you are purchasing real estate that was used by a business using/producing hazardous materials, you may be held liable for any contamination as the new owner. It is important that you are aware of all regulations regarding environmental liabilities to

protect your investments and the operation of your business.

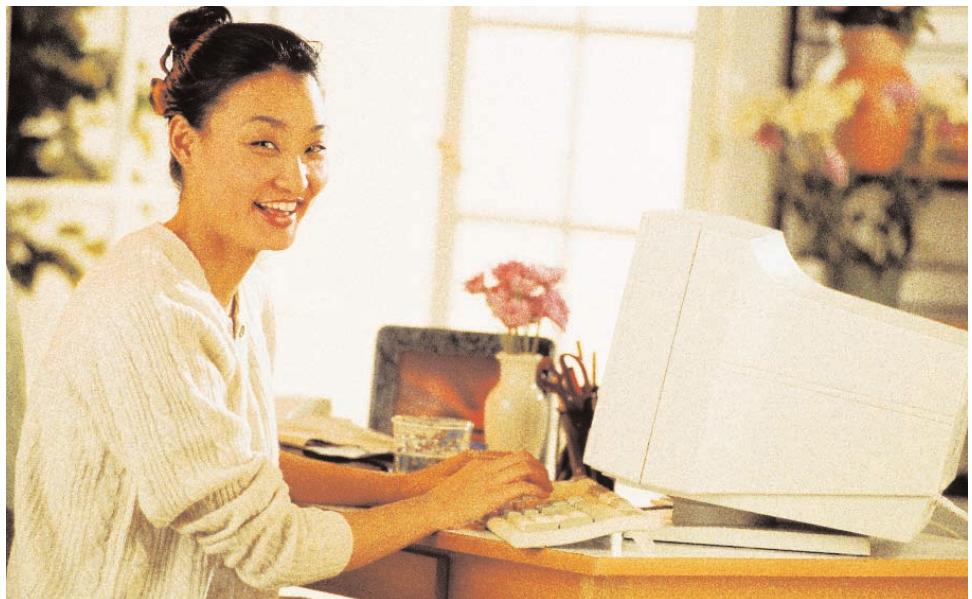
### Pollution Prevention

Prevention means reducing pollution at its source by substituting less polluting materials or by changing the process or the equipment used so that pollution and waste by-products are reduced or avoided. The Colorado Department of Public Health and Environment (CDPHE), Pollution Prevention (P2) Program helps businesses

the CDPHE, Pollution Prevention Program Office at (303) 692-2977 or (303) 692-2186.

### Solid Waste and Hazardous Materials

The CDPHE Hazardous Materials and Waste Management Division regulates solid and hazardous waste. Businesses that may need to comply with waste regulations include, but are NOT limited to, photo-chemical processing stores, auto repair shops plus any business that uses and disposes of batteries and florescent light



identify alternative production processes, changes in raw materials and alternative technologies to reduce pollution. The use of these alternative work practices may reduce your emissions and waste to the point where permits or other regulatory requirements are no longer necessary. For P2 technical information or assistance call

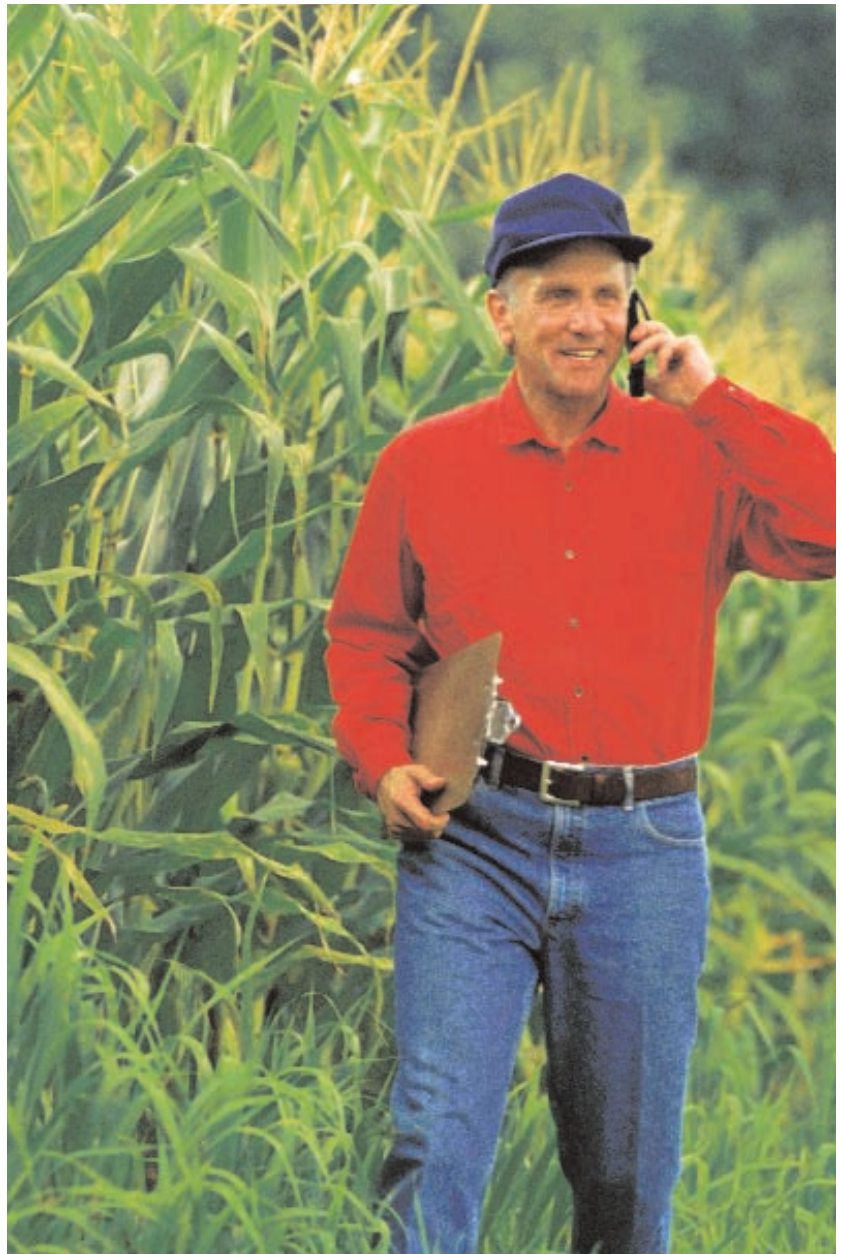
bulbs. To determine if your business must comply with waste rules and regulations call the Division's public assistance hotline at (303) 692-3320. This service will help you ascertain if your business is required to comply with any waste regulations and answer any questions you have on hazardous and solid waste.

### Water Pollution and Drinking Water Quality

The CDPHE Water Quality Control Division manages water quality in Colorado. Two types of activities are regulated by the Division that are applicable to small businesses: 1) discharges of wastewater or stormwater runoff, and 2) compliance with regulations for public water systems. Any discharge of pollutants (ranging from pumping ground water from an excavation to pouring out water used in industrial processes) may require a permit. In addition, industrial sites and construction sites may need permits to control pollutants washed off into storm runoff. Public water systems that provide drinking water to 25 or more people for more than 60 days of the year, must comply with the Safe Drinking Water Act and the Colorado Primary Drinking Water Regulations. For more information and assistance on whether or not your business needs to comply with water quality regulations, call the Water Quality Control Division at (303) 692-3500.

### Air Pollution

The 1990 Federal Clean Air Act Amendments expanded the number and types of businesses that must comply with air quality standards. Businesses that may need to comply with air quality regulations include, but are NOT limited to, dry cleaners, print shops, refrigeration and air conditioning services, furniture manufacturers, feedlots and cement/asphalt companies. As a small business, you may be required to file for an Air Pollution Emissions Notice (APEN) and possibly obtain a permit under the "Colorado Pollution Prevention and Clean Air Act." Whether or not your business needs to file an APEN depends on the amount and type of annual air emissions produced and the location of your business. Once your APEN form is completed and submitted to the CDPHE Air Pollution Control Division it is used to determine if your business must obtain a permit. There is a \$119.96 fee for filing an APEN. However, businesses may be subject to fines of up to \$500 for failing to file APENs and up to \$15,000 per day for failure to



obtain a permit. The Division provides technical assistance to small businesses through the Small Business Assistance Program (SBAP). The SBAP has developed "how to" documents to help businesses calculate their emissions. They also have developed some industry specific APEN forms. The SBAP can assist your business in understanding and complying with air pollution requirements. For information or assistance call the SBAP at (303) 692-3175 or (303) 692-3148 or go to the web at [www.cdphe.state.co.us/ap/sbap.asp](http://www.cdphe.state.co.us/ap/sbap.asp)

### HEALTH INSURANCE

Employers are not required by federal or state law to provide health coverage to their employees. However, if you do provide health benefits, certain laws will determine the nature of the plan and how it is administered. In Colorado, group insurance policies are required to include newborn coverage, maternity, complications of pregnancy, mammography screenings and mental health benefits and other mandated benefits. When an employee is terminated or leaves the job, federal and state laws

require the employer to notify the employee of his/her right to continue coverage with the group at his/her own expense. The right to continue generally extends for 18 months or until the individual is eligible for other group coverage, whichever comes first. This right to continue applies to dependents covered under the group plan as well as the employee. If the group consists of 20 or more employees, the federal COBRA laws govern continuation coverage, while groups with less than 20 employees can claim continuation rights under state insurance law. For more information on COBRA contact the U.S. Department of Labor, Pension and Welfare Benefits Administration, 1100 Main St., Suite 1200, Kansas City, MO 64105, (816) 426-5131.

### Small Group Health Insurance Rights

Over the past several years, Colorado has passed some tough new laws designed to provide small employers with increased coverage, premium and benefit protections. If you have 50 eligible employees or less, you have the right to purchase small group coverage under most circumstances.

- For a small employer with 2 to 50 eligible employees, coverage must be provided from any small group carrier in the state. Health carriers must issue a small group plan if you satisfy the provisions of the plan and agree to make required premium payments. This is true for all small employers regardless of occupation or the health of the group.
- If you are a self-employed business group of one who applies for and is declined coverage under any of a carrier's small group plans, the carrier must offer you the opportunity to purchase a Standard or Basic Health Plan during your open enrollment period, which is 30 days following your birth date. Copies of the Basic and Standard Health Benefit Plans may be obtained by writing the Colorado Division of Insurance, 1560 Broadway, Suite 850, Denver, CO 80202, (303) 894-7490 in the Denver metro area, or (800) 930-3745, statewide.
- A health carrier who sells you any of its health plans must offer to cover all eligi-

ble employees regardless of their health.

- If your policy was issued or renewed after January 1, 1997, the only factors a health carrier may use in setting premiums for your group are specified case characteristics (i.e., age, geographic location, and family composition of persons covered under your plan.) Claims experience, health status, industry and gender are all eliminated as factors.
- Health carriers cannot exclude coverage of certain conditions for individual employees through policy riders.
- Insured employees and dependents have the right to convert to a Standard or Basic Health Benefit Plan when they exhaust continuation coverage.
- Health carriers are also required to renew your coverage if you want it renewed. As long as you continue to meet participation and contribution requirements, they cannot cancel your policy unless they pull out of the Colorado market segment (i.e., individual, small or large group) entirely or you commit fraud, abuse or fail to pay your premiums.
- If you change health carriers, the new carrier must cover everyone who was covered under the old policy. Health carriers cannot "dump" high risk eligible employees or dependents.
- The maximum period during which a health carrier can exclude coverage for a health condition that existed prior to the effective date of coverage is 6 months, or 12 months for Business Groups of 1, effective January 1, 2003.
- Health carriers are required to give every person covered under a small employer plan "credit" for any pre-existing condition exclusion period already met under a prior plan if no more than 90 days have lapsed between coverages.
- Health carriers must explain in their sales and solicitation materials how they calculate premium rates.
- Health carriers must allow qualifying employees and dependents no longer covered by a small group plan to continue coverage for up to 18 months at their own expense or until they become eligible for other group insurance, whichever occurs first. For more information on your

rights as a small business or assistance with other issues concerning employee health insurance and state insurance laws, you may contact the Consumer Section of the Colorado Division of Insurance at 1560 Broadway, Suite 850, Denver, CO 80202, (303) 894-7490 in the Denver metro area or (800) 930-3745 statewide or visit their internet site at [www.dora.state.co.us/insurance](http://www.dora.state.co.us/insurance)

### Health Care Cooperatives

The Health Care Cooperative Law was passed in 1994, in response to a rising number of uninsured among the employees of small employers. These groups traditionally faced high premiums and numerous pre-existing condition exclusions, causing many small employers to forego offering insurance as an employee benefit. A health care coverage cooperative is made up of two or more employers that obtain a certificate of authority from the State of Colorado to join together to buy health insurance. The cooperative contracts for coverage on behalf of its employer-members and offers a choice of insurance carriers and benefit plans to employers or employees. The cooperative may also perform administrative functions such as premium collection and distribution, enrollment and disenrollment and production of employee information materials. In most cases, a cooperative will charge members a small fee to cover administrative costs. Rather than contracting with a variety of health insurance carriers, an employer simply signs up with a cooperative and has access to all the cooperative's health plans and administrative services.

### Who Can Join a Cooperative?

Any employer can join, but there are special protections for small employers. A small employer is defined as having 1 to 50 employees or being a sole proprietorship. Cooperatives are not required to accept large employers, but they must accept any small employer. Employers may join a cooperative at any time. Interested employers or employees should contact the Colorado Department of Health Care Policy and Financing, 1575 Sherman St., Denver,



CO 80203, (303) 866-2993, for a list of certified cooperatives. To join, an employer simply has to sign up with a cooperative that provides coverage in the employer's geographic area. The cooperative probably won't collect administrative fees until premiums are collected. In most cases, coverage will be available within thirty days.

#### How Would I Start a Cooperative?

Interested employers should contact the Department of Health Care Policy & Financing to obtain further information on the laws and regulations that govern the formation of cooperatives. The following technical assistance documents are available to potential cooperatives, a sample application for co-op certification, a sample health plan request for applications, cooperative ground-rules handbook and cooperative infrastructure handbook.

#### Questions to Ask

When shopping for health coverage, it is important to make sure you are actually buying the coverage you want and can afford. Employers and employees should make a list of their needs to compare with actual policy provisions. Listed are some key questions you should ask when shopping for coverage.

- **Coverage:** Ask about the nature and extent of coverage offered by different plans. Ask that coverage provisions be shown to you in the policy contract. What does the plan cover (scope of benefits)? What is not covered by the plan (exclusions)? Does the plan cover the treatments and services my employees want covered? Are any of the following non-mandatory benefits covered and, if so, to what extent: adult preventive care, substance abuse, organ transplants, vision care, dental care, prescription drugs, infertility counseling, durable medical equipment, etc.?
- **Costs/Premiums:** When comparing plans, compare benefits to find out why one plan is cheaper than another. Compare deductible and co-payment requirements. Are there limits on the amount of coverage for certain conditions or types of treatments? How much are the

#### USEFUL PHONE NUMBERS FOR ENVIRONMENTAL PROGRAMS

Air Pollution Emission Notice  
(APEN) forms  
(303) 692-3150  
[www.cdphe.state.co.us](http://www.cdphe.state.co.us)

Clean Air Small Business  
Assistance Program  
(303) 692-3175  
[www.cdphe.state.co.us/ap/aphom.asp](http://www.cdphe.state.co.us/ap/aphom.asp)

CDPHE Hazardous/Waste Division  
(303) 692-3300  
[www.cdphe.state.co.us/hm/hmhom.asp](http://www.cdphe.state.co.us/hm/hmhom.asp)

CDPHE Water Quality  
Control Division  
(303) 692-3500  
[www.cdphe.state.co.us/wq/wqhom.asp](http://www.cdphe.state.co.us/wq/wqhom.asp)

CDPHE Office of  
Pollution Prevention  
(303) 692-3009  
[www.cdphe.state.co.us/ap/aphom.asp](http://www.cdphe.state.co.us/ap/aphom.asp)

out-of-pocket maximums? What is the minimum amount that you must contribute (e.g., 50 percent of the premium)? Is this acceptable? Compare lifetime benefit caps on coverage.

- **Plan Types:** Compare the types of plans, including indemnity, preferred provider and HMO. How do benefit and reimbursement levels differ? How often can rates be changed?
- **Claims Payments:** What is the basis for paying claims under the policy? For example, if it is "usual and customary rates," find out exactly what this means. If pre-authorization is required, what is involved? Does it guarantee payment? If the plan normally pays less than what your doctor charges, who makes up the difference?
- **Plan Restrictions:** Are there restrictions on the use of providers and services under the plan? Are my employees comfortable with these restrictions? Will the

list of restrictions be available to each employee and regularly updated?

- **Affordability:** What kind of coverage can I afford? How much coverage can my employees afford? How much can I lower the cost of coverage if I buy a health benefit plan with a higher deductible or higher co-payments?
- **Worse Case Scenario:** Investigate how much coverage different plans would provide under a worse case scenario (e.g., someone requires \$100,000 in specialty care that only one very expensive hospital can provide, or needs \$200 a month in either prescription or nonprescription drugs, or has a sports injury that requires long-term physical therapy, or develops a long-term chronic disease requiring continuing care). How much would a covered employee or dependent have to pay out-of-pocket under a worse case scenario?
- **Cost Containment:** Look at the cost containment features of different plans. Are any of the following cost containment approaches required: utilization review, separate deductible and out-of-pocket accumulations for in- and out-of-network benefits, alternate dispute resolution, managed care, etc.?
- **Customer Service:** Find out as much as you can about how the carrier performs customer service. Is this an established carrier? How long has the carrier been active in the small group market? Has the company had an unusually high number of consumer complaints? What happens when you call the carrier's customer service number?

#### Health Care Reform

In 1996, the 104th Session of Congress passed several health insurance reform issues that concern small business owners. The following key provisions of the Health Insurance Portability and Accountability Act for small business became effective January 1, 1998.

#### Increased Health Insurance Deductions

Currently the self-employed can only deduct 45% of their health insurance premiums from their income. According to this

new law, this deduction will increase to 80% over 7 years.

The phase-in is as follows:

2000 - 45%	2004 - 60%
2001 - 45%	2005 - 70%
2002 - 45%	2006 - 80%
2003 - 50%	

### Medical Savings Accounts (MSAs)

Businesses with less than 50 employees, self-employed workers and the uninsured will be eligible to enroll in a MSA program. Currently not all persons with a high deductible health plan (HDHP) are permitted to make tax deductible contributions to these special medical savings accounts. If you do enroll in the allotted time period for an MSA plan you will be permitted to keep the plan even if Congress decides not to expand the eligibility. Individual contributions cannot exceed employee income and contributions for individuals are limited from 65% to 75% of the deductible of the HDHP. Before participating, employers should review the state health insurance laws for the allowance of high deductible insurance plans. See [www.irs.gov/pub/irs-pdf/p969.pdf](http://www.irs.gov/pub/irs-pdf/p969.pdf).

### Insurance Reforms

Federal law provides increased portability of health insurance by limiting the ability of group health plans to exclude or disqualify persons having a pre-existing condition from coverage. This means that individuals who lose or leave their jobs can maintain health insurance coverage, even if they are sick, by receiving "credit" toward any pre-existing conditions limits for prior coverage.

People who are denied coverage for a pre-existing condition by their new employer's health plan may still receive coverage under the previous employer's plan via COBRA. In the past, a beneficiary's right to COBRA ceased when they became covered under a new plan. With this new law, their right to COBRA will not be terminated if their pre-existing condition is excluded.

Employers will still be allowed to delay benefit coverage to new employees during a standard waiting or probationary period, often three months. For the purposes of

determining "continuous coverage," employees would be considered continuously covered during this period.

## INSURANCE PROTECTION

### Other Types

#### • Commercial Automobile Insurance:

Colorado law requires this coverage. Therefore, if you have any type of motor vehicle titled in the business' name, you must carry the insurance in the name of the business also.

#### • General Business Liability:

This is the broadest form of coverage which can protect you against losses when injury, damage or even death results to another person or his/her property because of busi-

### THE FOLLOWING ARE ONLY A FEW EXAMPLES OF BUSINESSES THAT MAY BE SUBJECT TO ENVIRONMENTAL LIABILITIES AND REGULATION:

- Auto shop products, including batteries, gasoline, oil, paint and tires
- Bakeries, canneries, meat packing plants and other food processors
- Breweries and distillers
- Cement, asphalt, tar and other "paving" materials
- Chemical manufacturers and processors
- Dry cleaners
- Furniture manufacturers
- Explosives manufacturers
- Lumber mills and paper products producers
- Medical laboratories
- Plastics and synthetics materials manufacturers
- Paint shops and manufacturers
- Pest control
- Print shops, publishers, photo finishing and copiers
- Refrigeration and air conditioning manufacturing/repair.

ness negligence. You may be responsible for obligations covering medical and disability expenses and even death and funeral compensation to the dependents of one who has been injured. Your obligations may even extend beyond the general liability for which you assume you are responsible. Read the terms of the insurance contract carefully.

#### • Product Liability Insurance:

If you manufacture a product, product liability insurance can also cover the goods you produce. Coverage usually applies once you have given the product to someone else who will modify or alter it in some way or distribute it for wholesale or retail sale. Insurance coverage typically relates to the product itself, but may also protect you, as the manufacturer, should someone experience personal injury or property damage from the use of your product.

#### • Completed Operations Insurance:

If you are a contractor, you can become insured for events that may occur after you leave the job site. Problems which may be covered include personal injuries or damage to someone's property as a result of something worked on going wrong. This is called Completed Operations Liability Insurance.

#### • Property Insurance:

This covers the property the business owns, both building and contents. It can also cover property of your customers. You can be protected against losses in the event your business is damaged as a result of natural disaster, fire, burglary or vandalism that may destroy all or part of your property.

#### • Business Interruption Insurance:

(Also referred to as "Specific Time Element Coverage"). This can pay losses of income as a result of property damage that might occur to your business from either environmental factors, natural disasters or destruction by others, until you are able to begin operating again. Coverage limits will vary and are only for the amount of actual losses. Limited coverage for a specific amount of time and a specific amount of reimbursement (for example, coverage could be purchased for a 30, 60, 90 or 365 day period and would reimburse you for 50 percent of your profits) can help pay for

your ongoing business expenses.

- **Inland Marine Insurance:** This can cover specific high value items, such as a computer, or any property item which has some mobility, such as a motor truck cargo, and contractor's equipment. It can also cover your property while it is away from your business premises.
- **Errors And Omission/Professional Liability Insurance:** This is often recommended for employees, owners and directors of the business. Errors and omissions and professional liability coverage offer protection for employees and owners of the business against lawsuits that may arise as a result of their actions, or inactions, for duties performed during the course of business.
- **Bonding:** This is not an insurance contract. However, there are several types of surety bonds that you can purchase which cover a wide range of losses. Fidelity bonds are designed to protect a business

or employer from losses due to the dishonesty of employees, partners or officers in the business. However, the amount of coverage may be limited so you should check with your insurance agent as to the specific amount of coverage necessary.

Performance bonds guarantee a business' performance because of an obligation or contractual agreement. If you default on a contract or agreement to do work, a performance bond will guarantee payment to the person who has contracted with you for the remaining work. State and/or local laws frequently require that certain occupations (such as construction workers or motor vehicle dealers) post a bond before they can be licensed or before they are awarded a state contract. Bonding is usually not mandatory. However, many private companies require that you also post a bond before beginning work. The previous are very broad classes of insurance needs you may want to consider. The

particular insurance needs of your business may vary. There is not a single, all-inclusive package that will apply to everyone. To best meet the individual needs of your business, you should consult an insurance agent or broker who is qualified to go over the various options available to you. Insurance companies frequently offer small businesses packages of coverage in one policy. These package policies, which go by different names, sometimes offer coverage which can't be purchased separately, and usually are offered at cheaper rates than if the coverage were purchased individually. You can add specific coverage which you need or increase limits, to offer the protection levels necessary to cover your business exposure.

- **Unemployment Insurance And Workers' Compensation Insurance:** This is required by law if you have employees in your business. Refer to the Employer Responsibilities chapter of this Guide.

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